

# CAPABILITY POLICY AND PROCEDURE

## Purpose

The continued success of Hinckley and Bosworth Borough Council is dependent on employees achieving and maintaining high standards of performance in their roles. The council is committed to provide the necessary support to staff to meet its standards of performance. The Managing Performance Guide (located on the intranet) is a framework for managers to use so that any concerns or issues can be dealt with informally in the first instance.

However, if poor performance is highlighted as a continuing problem, such as an employee lacking in knowledge, skill or ability to the standard required, the Capability Policy and Procedure will be invoked to ensure the council enforces its requirements of performance standards fairly and consistently; managers must ensure accurate records are kept from previous 1:1 meetings and seek further advice from HR.

This policy and procedure is designed to help and encourage employees to achieve and maintain standards of performance. In contrast, where an employee's unsatisfactory job performance is clearly due to the employee's own lack of effort, carelessness or negligence, the issue will be dealt with under the council's Disciplinary Procedure.

This procedure will be subject to periodic review and amendments following consultation with the recognised trade unions.

## Scope

This policy applies to all employees except for those covered by Chief Officer or Chief Executives Conditions of Service. Separate arrangements covering employees on these conditions of service are available from Human Resources.

The policy will not apply to employees during the probationary period as this will be dealt with under the Probation Procedure.

## Principles

- Problems of poor performance are to be dealt with quickly and equitably.
- Employees have a contractual responsibility to perform to a satisfactory level. Responsibility is also placed on managers to ensure that appropriate support is given to their employees to help them to achieve and sustain this satisfactory level.
- Managers will use this policy and procedure in conjunction with regular individual meetings with their staff, including 1:1 meetings. This procedure should only be adopted if the manager has concerns about an employee's overall performance, such as the quality/quantity of their work or if there are significant aspects of the job that the member of staff needs targeted support to bring their performance up to the required standard.
- An employee has the right to be accompanied to any formal meeting held as part of this procedure by their trade union representative or work colleague.
- Hybrid workers may be required to work at the council offices should a performance issue be identified to ensure full support is given.

- No formal action will be taken against an employee whose performance has fallen below the standards that are regarded as satisfactory until the Stage 2 process below has been exhausted.
- The council's commitment to equality of opportunity will be observed during the operation of this policy and procedure.

## **Guidance – implementing the policy and procedure**

### **1. Improvement Plans**

- 1.1 Improvement Plans are used to document actions to be taken by the employee and the manager to improve the employee's performance. This plan may be used at any time, regardless of whether formal performance procedures have been initiated.
- 1.2 An Improvement Plan will normally cover a period of 4-8 weeks, depending on the circumstances. Progress should be reviewed on a regular basis. The Improvement Plan may be extended at the end of the review period or a further Improvement Plan may be agreed, if required. The manager and employee may review and agree amendments to the Improvement Plan together at any time.
- 1.3 It is expected that Improvement Plans will be put in place in a timely manner unless there is evidence which indicates that an Improvement Plan would not achieve the aim of supporting the employee to improve their performance to a consistently satisfactory standard.
- 1.4 Before agreeing to an action plan employees have the right to discuss and review the action plan with their trade union representative.
- 1.5 The employee can submit a grievance under the grievance procedure if they feel an action plan imposed on them is unfair.

### **2. Medical or disability related employee performance**

- 2.1 Where the cause of an employee's under-performance relates to their state of health, disability or long-term condition, managers must consider supportive measures and reasonable adjustments which could assist the employee to perform at the required standard. If any actions are agreed, following these discussions, they will be set out in writing by the manager and reviewed on a regular basis.
- 2.2 Medical advice may be sought at any stage about an employee's state of health by occupational health or a medical health professional (GP/consultant), with a view to implementing any measures which could assist the employee to improve their performance; this may be requested more than once if required. Managers should discuss the purpose of the referral in detail with the employee and discuss any medical reports received with the employee promptly. If any actions are agreed, following the referral, they will be set out in writing by the manager.

- 2.3 Where the employee's condition or state of health results in absence from work, it may be necessary to manage this in accordance with the Attendance Management Framework. Depending on the circumstances, management of performance and attendance issues may take place simultaneously or consecutively, as appropriate, but as the two procedures are initiated for different reasons, they must be carefully managed.
- 2.4 If the employee is absent at all due to workplace stress, the manager will refer them to Occupational Health without delay. Referring employees provides the manager with a better understanding of how they can support the employee through this process. A stress risk assessment will also be required to help identify concerns and consider support.

### **3. Counter Complaints**

- 3.1 Managers are responsible for appropriately managing an employee's performance. Carrying out this function in a supportive, fair, firm and consistent manner does not constitute unacceptable behaviour, although it is recognised that some staff may feel stressed or anxious whilst the procedures are ongoing. The aim of this policy is that managers and employees work closely and cooperatively together to improve the employee's performance at work.
- 3.2 Managers who are using council procedures to address an employee's performance, attendance or conduct will not be regarded as demonstrating unacceptable behaviour unless there is evidence to show that they have acted inappropriately. Where a complaint is received from an employee against their manager and the complaint is solely or largely related to the commencement of these procedures, the manager's manager will meet with the complainant to discuss their concerns. The complaint will be investigated further if evidence is provided which suggests that the manager has acted inappropriately or the concerns raised are not a consequence of the instigation of these procedures. If this is the case the grievance procedure will be followed.

### **4. Alternative Work**

- 4.1 Where it is agreed by both the manager and the employee that suitable alternative employment would be an option to resolve the situation at any stage of the procedure, the manager will provide a reasonable level of support to help the employee gain alternative employment (or consider re-deployment). This support may include coaching, short training sessions and or support in completing job applications or interview skills training as appropriate.

### **5. Escalation of Cases**

- 5.1 In a small number of serious cases, the circumstances may indicate that escalation directly to a Formal Performance Meeting is appropriate. Managers must be able to justify their decision to escalate a case, for example because there is a clear and significant risk to service users or colleagues.
- 5.2 Managers should consult with Human Resources before taking steps to escalate directly to a Formal Employee Performance Meeting or Hearing. The

employee must be forewarned that escalation to a Formal Employee Performance Meeting/Hearing is being considered prior to taking this decision.

## **Procedure for managing unsatisfactory performance**

### **Informal Process – Stage 1**

#### **6. Informal meeting and improvement plan**

- 6.1 Where concerns about an employee's performance arise, the manager should discuss the matter with the employee without delay, especially where the repercussions could have a significant adverse impact, for example potentially jeopardising the health and safety of colleagues or service users. The employee should be informed that the manager intends to support them to improve their performance in line with the Capability Policy and Procedure.
- 6.2 The manager will engage with the employee to clarify their concerns and their expectations of the employee, and the employee will be given an opportunity to respond. The cause of the unsatisfactory performance should be fully explored.
- 6.3 Unless the circumstances are serious enough to justify progressing directly to the formal stages of the procedure, the employee will be offered support to improve, and the employee will be required to take steps to achieve and sustain performance at a level or performance to the required standard.
- 6.4 All discussions relating to managing the employee's performance must be documented, and any agreed actions including a timeline will be followed up in writing. An improvement plan must be used for this purpose. Managers will arrange review meetings with the employee to discuss their progress, which will take place on a regular basis.
- 6.5 If the employee's performance improves and consistently reaches a satisfactory level during the review period, the manager will confirm with the employee that they have reached a satisfactory level. However, the employee should also be informed that if their performance falls below the required standard, within a reasonable timescale, then it is likely that the formal process will be adopted.
- 6.6 If the employee continues to not meet the required standards or targets during the review period despite the relevant support received, the manager will inform them that the formal procedure will commence.

### **Formal Process – Stage 2**

#### **7. Formal Performance Meeting**

- 7.1 The formal procedure for managing an employee's performance should be used where:
  - attempts to improve the employee's performance informally have not resulted in the required improvements or;
  - it is apparent that the employee's performance issues at the outset are sufficiently serious to justify escalation or:

- it is apparent that the employee is not fully engaging with the process in order to make the required improvements to their performance within a reasonable timescale.
- 7.2 Where the employee's performance continues to be unsatisfactory, the manager will hold a Formal Performance Meeting with the employee. Human Resources will attend the meeting to advise and take notes.
- 7.3 The employee will be given at least 5 working days' notice in writing of the Formal Performance Meeting and will have the right to be accompanied by a work colleague or trade union representative. The employee must be made aware of the evidence that will be considered at the meeting and provided with copies in advance. The employee may also submit evidence for consideration in advance of the meeting.
- 7.4 Having carefully considered the evidence, the manager may find that:
- a. The employee's performance is satisfactory. No further action will be taken at this stage. However, the employee's performance will continue to be monitored for a period of 12 months following the Formal Performance Meeting to ensure it is sustainable. Should the employee's performance lapse during this time the formal procedure will be resumed.
  - b. They are satisfied that the employee has been given sufficient opportunity and support to improve their performance, but their performance remains unacceptable. An Improvement Plan will be drawn up and the employee will be made aware that if they fail to reach the required standard by the end of the plan, then their case will be considered at a Final Performance Hearing.
- 7.5 The employee will be notified of the decision, and this will be confirmed in writing within 5 working days.

## **8. Review period**

- 8.1 If performance is unacceptable then the manager and employee will meet to draw up an Improvement Plan as soon as possible following the Formal Performance Meeting. The Improvement Plan will normally cover a period of 4-8 weeks, depending on the circumstances. However, this may be extended for a reasonable timescale to implement any further support mechanisms to enable the employee to reach the required standard of performance.
- 8.2 At the end of the period of the Improvement Plan the manager will meet with the employee and decide whether the employee has reached the required standard of performance. If they have, this will be acknowledged in a positive way by the line manager. However, the employee will be informed that their performance will continue to be monitored for a period of 12 months following the successful completion of the Improvement Plan, to ensure it is sustainable. Should the employee's performance lapse during this time, the formal procedure will be resumed.
- 8.3 Where the employee's performance continues to be unsatisfactory, and as a result dismissal is being considered, the manager will refer the case to a senior manager for a Final Performance Hearing.

## **Formal Process – Stage 3**

### **9. Final Performance Hearing**

- 9.1 If the necessary improvements have not been achieved a Final Performance Hearing should be convened, where a recommendation to dismiss may be made.

#### **Preparation for the hearing**

- 9.2 The manager should write a report which summarises the employee's shortfall in performance and the steps taken to address that shortfall and submit it, along with appropriate supporting paperwork, to the senior manager. The report will be presented at the hearing by the manager.
- 9.3 If the employee's performance issues are connected to a disability or long-term condition, the manager must have obtained up to date medical information and have considered and implemented any reasonable adjustments before proceeding to a Final Performance Hearing.
- 9.4 The manager, supported by Human Resources, will arrange for the employee to attend the hearing. The Final Performance Hearing will be chaired by an experienced senior manager, accompanied by Human Resources who will take notes.
- 9.5 The employee will be given at least 5 working days' notice in writing of the hearing and will have the right to be accompanied by a colleague or trade union representative. The employee must be made aware of the evidence that will be considered at the hearing and provided with copies of documentary evidence in advance (at least 5 days before the hearing). The employee may also submit evidence for consideration, and the Chair must receive it in advance of the hearing.
- 9.6 The manager and employee may each call witnesses to attend the Final Performance Hearing to give evidence.
- 9.7 Having carefully considered the case, the Chair may find that:
- a. The employee's performance is satisfactory. No further action will be taken at this stage; however, the employee's performance will continue to be monitored for a period of 12 months following the Formal Performance Hearing to ensure it is sustainable.
  - b. The employee's performance is not satisfactory; however, it is apparent that they could achieve an acceptable standard of performance within a reasonable period of time. The exact duration of the improvement period will be determined by the Chair, taking account of the evidence available, and will not normally exceed three months. The Formal Performance Hearing may be reconvened at any time if the employee's performance does not improve during this period. If the employee achieves a satisfactory standard of performance during this period, their performance will continue to be monitored for a period of 12 months following the reconvened Formal Performance Hearing to ensure it is sustainable. A final written warning will be issued.

- c. They are satisfied that the employee has been given sufficient opportunity and support to improve their performance, however the employee has failed to meet the required levels of performance. It is appropriate in the circumstances to dismiss with notice.

9.8 The employee will be notified of the Chair's decision, and this will be confirmed in writing within 5 working days.

## **10. Appeal**

10.1 The employee has the right to appeal against the Chair's decision. The grounds for the appeal must be submitted in writing to the HR and Transformation Manager to be received within 5 working days of receiving written confirmation of the Chair's decision.

10.2 The Appeal will be considered by another senior manager who will act as Chair supported by Human Resources. Members of the panel will have no prior knowledge of the case.

10.3 Having carefully considered the case, the panel will decide on one of the following:

- a. To uphold the decision; or
- b. Find that the employee's performance is satisfactory. In this case, the employee's performance will continue to be monitored for a period of 12 months following the Formal Performance Hearing to ensure it is sustainable.